

# SENATE BILL No. 50

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-49-3.

**Synopsis:** Obscenity and matter harmful to minors. Makes numerous changes to penalty provisions for crimes involving: (1) sending or bringing into Indiana or sending or taking out of Indiana obscene matter for sale or distribution; (2) distributing, offering to distribute, sending, bringing, or exhibiting to another person obscene matter; and (3) engaging in, participating in, managing, producing, sponsoring, presenting, exhibiting, photographing, filming, or videotaping any obscene performance. Makes it a Class A misdemeanor for a person to knowingly or intentionally sell or distribute or display for sale or distribution to any person matter that is harmful to minors within 500 feet of the nearest property line of a school, library, licensed day care center, church, or facility used to provide activities for persons less than sixteen years of age after school hours. Lowers the penalty for certain acts of disseminating matter harmful to minors or engaging in certain conduct harmful to minors from a Class D felony to a Class A misdemeanor, except for persons with certain prior convictions. Makes the offense a Class D felony if the person has a prior unrelated conviction.

**Effective:** July 1, 2000.

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November 18, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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# SENATE BILL No. 50



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-49-3-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A person who
- 3 knowingly or intentionally (+) sends or brings into Indiana **or sends or**
- 4 **takes out of Indiana** obscene matter for sale or distribution ~~or~~ (2)
- 5 **commits a Class D felony. However, the offense is:**
- 6 (1) a Class C felony if:
- 7 (A) the person has a prior unrelated conviction under:
- 8 (i) this subsection; or
- 9 (ii) the law of any other jurisdiction in which the
- 10 elements of the crime for which the conviction was
- 11 entered are substantially similar to the elements of the
- 12 crime described in this subsection; or
- 13 (B) the obscene matter depicts or describes sexual conduct
- 14 involving any person who is or appears to be less than
- 15 sixteen (16) years of age; and
- 16 (2) a Class B felony if:
- 17 (A) the person has a prior unrelated conviction under:



- 1 (i) this subsection; or  
 2 (ii) the law of any other jurisdiction in which the  
 3 elements of the crime for which the conviction was  
 4 entered are substantially similar to the elements of the  
 5 crime described in this subsection; and  
 6 (B) the obscene matter depicts or describes sexual conduct  
 7 involving any person who is or appears to be less than  
 8 sixteen (16) years of age.
- 9 (b) A person who knowingly or intentionally offers to distribute,  
 10 distributes, sends or brings, or exhibits to another person obscene  
 11 matter for a noncommercial purpose or while acting within the  
 12 scope of the person's employment with no financial interest in the  
 13 obscene matter commits a Class A misdemeanor. However, the  
 14 offense is:
- 15 (1) a Class D felony if:  
 16 (A) the person has a prior unrelated conviction under:  
 17 (i) this subsection; or  
 18 (ii) the law of any other jurisdiction in which the  
 19 elements of the crime for which the conviction was  
 20 entered are substantially similar to the elements of the  
 21 crime described in this subsection; or  
 22 (B) the obscene matter depicts or describes sexual conduct  
 23 involving any person who is or appears to be ~~under~~ less than  
 24 sixteen (16) years of age; and
- 25 (2) a Class C felony if:  
 26 (A) the person has a prior unrelated conviction under:  
 27 (i) this subsection; or  
 28 (ii) the law of any other jurisdiction in which the  
 29 elements of the crime for which the conviction was  
 30 entered are substantially similar to the elements of the  
 31 crime described in this subsection; and  
 32 (B) the obscene matter depicts or describes sexual conduct  
 33 involving any person who is or appears to be less than  
 34 sixteen (16) years of age.
- 35 (c) A person who knowingly or intentionally offers to distribute,  
 36 distributes, sends or brings, or exhibits to another person obscene  
 37 matter while exercising ownership or managerial control over the  
 38 obscene matter commits a Class D felony. However, the offense is:
- 39 (1) a Class C felony if:  
 40 (A) the person has a prior unrelated conviction under:  
 41 (i) this subsection; or  
 42 (ii) the law of any other jurisdiction in which the

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- 1 elements of the crime for which the conviction was  
 2 entered are substantially similar to the elements of the  
 3 crime described in this subsection; or  
 4 (B) the obscene matter depicts or describes sexual conduct  
 5 involving any person who is or appears to be less than  
 6 sixteen (16) years of age; and  
 7 (2) a Class B felony if:  
 8 (A) the person has a prior unrelated conviction under:  
 9 (i) this subsection; or  
 10 (ii) the law of any other jurisdiction in which the  
 11 elements of the crime for which the conviction was  
 12 entered are substantially similar to the elements of the  
 13 crime described in this subsection; and  
 14 (B) the obscene matter depicts or describes sexual conduct  
 15 involving any person who is or appears to be less than  
 16 sixteen (16) years of age.
- 17 SECTION 2. IC 35-49-3-2 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) A person who  
 19 knowingly or intentionally engages in, participates in, manages,  
 20 produces, sponsors, presents, exhibits, photographs, films, or  
 21 videotapes any obscene performance for a noncommercial purpose  
 22 or while acting within the scope of the person's employment with  
 23 no financial interest in the obscene performance commits a Class A  
 24 misdemeanor. However, the offense is:  
 25 (1) a Class D felony if:  
 26 (A) the person has a prior unrelated conviction under:  
 27 (i) this subsection; or  
 28 (ii) the law of any other jurisdiction in which the  
 29 elements of the crime for which the conviction was  
 30 entered are substantially similar to the elements of the  
 31 crime described in this subsection; or  
 32 (B) the obscene performance depicts or describes sexual  
 33 conduct involving any person who is or appears to be less  
 34 than sixteen (16) years of age; and  
 35 (2) a Class C felony if:  
 36 (A) the person has a prior unrelated conviction under:  
 37 (i) this subsection; or  
 38 (ii) the law of any other jurisdiction in which the  
 39 elements of the crime for which the conviction was  
 40 entered are substantially similar to the elements of the  
 41 crime described in this subsection; and  
 42 (B) the obscene performance depicts or describes sexual

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1           conduct involving any person who is or appears to be less  
2           than sixteen (16) years of age.

3           (b) A person who knowingly or intentionally engages in,  
4           participates in, manages, produces, sponsors, presents, exhibits,  
5           photographs, films, or videotapes any obscene performance while  
6           exercising ownership or managerial control over the obscene  
7           performance commits a Class D felony. However, the offense is:

8           (1) a Class C felony if:

9           (A) the person has a prior unrelated conviction under:

10           (i) this subsection; or

11           (ii) the law of any other jurisdiction in which the  
12           elements of the crime for which the conviction was  
13           entered are substantially similar to the elements of the  
14           crime described in this subsection; or

15           (B) the obscene performance depicts or describes sexual  
16           conduct involving any person who is or appears to be less  
17           than sixteen (16) years of age; and

18           (2) a Class B felony if:

19           (A) the person has a prior unrelated conviction under:

20           (i) this subsection; or

21           (ii) the law of any other jurisdiction in which the  
22           elements of the crime for which the conviction was  
23           entered are substantially similar to the elements of the  
24           crime described in this subsection; and

25           (B) the obscene performance depicts or describes sexual  
26           conduct involving any person who is or appears to be ~~under~~  
27           less than sixteen (16) years of age.

28           SECTION 3. IC 35-49-3-3 IS AMENDED TO READ AS  
29           FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3. A person who  
30           knowingly or intentionally:

31           (1) disseminates matter to minors that is harmful to minors;

32           (2) displays matter that is harmful to minors in an area to which  
33           minors have visual, auditory, or physical access, unless each  
34           minor is accompanied by ~~his~~ the minor's parent or guardian;

35           (3) sells ~~or distributes~~ or displays for sale ~~or distribution~~ to any  
36           person matter that is harmful to minors within five hundred (500)  
37           feet of the nearest property line of a:

38           (A) school;

39           (B) library;

40           (C) day care center licensed under IC 12-17.2;

41           (D) facility used to provide activities for persons less than  
42           sixteen (16) years of age after school hours; or

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1           **(E)** church;  
 2           (4) engages in or conducts a performance before minors that is  
 3           harmful to minors;  
 4           (5) engages in or conducts a performance that is harmful to  
 5           minors in an area to which minors have visual, auditory, or  
 6           physical access, unless each minor is accompanied by ~~his~~ **the**  
 7           **minor's** parent or guardian;  
 8           (6) misrepresents ~~his~~ **the person's** age for the purpose of  
 9           obtaining admission to an area from which minors are restricted  
 10          because of the display of matter or a performance that is harmful  
 11          to minors; or  
 12          (7) misrepresents that ~~he~~ **the person** is a parent or guardian of a  
 13          minor for the purpose of obtaining admission of the minor to an  
 14          area where minors are being restricted because of display of  
 15          matter or performance that is harmful to minors;  
 16          commits a ~~Class D felony~~. **Class A misdemeanor. However, the**  
 17          **offense is a Class D felony if the person has a prior unrelated**  
 18          **conviction under this section.**

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